IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7426 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANHARSINH @ MANOJ NARENDRASINH RAYJADA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/10/2000

ORAL JUDGEMENT

1. The petitioner - Manharsinh @ Manoj Narendrasinh Raijada of Babariya Colony Sheri No.2, Rajkot came to be detained by virtue of an order passed by the Commissioner of Police, Rajkot City, Rajkot on June 10, 2000 in

exercise of powers conferred under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

2. The grounds of detention served on the petitioner indicate that the detaining authority while considering the case of the petitioner for detention took into consideration two offences registered against the detenu at Bhaktinagar Police Station, Rajkot and Malaviya Nagar Police Station, Rajkot under the Bombay Prohibition Act. The detaining authority branded the petitioner as a 'bootlegger' as defined u/S. 2(b) of the PASA Act. The authority came to conclusion that the activities of the detenu are detrimental to public order and public health. While considering alternative less drastic remedies, the authority considered possibility of resorting to proceedings u/S. 57 (C) of the Bombay Police Act and observed that it is not possible to resort to the said proceedings as cases are required to be proved against the detenu. Whereas in the instant case only two cases are registered against detenu and one of such cases is pending trial; whereas the other is pending investigation. The detaining authority observed that the petitioner is required to be detained under the PASA Act in order to immediately prevent him from pursuing his illegal and anti social activities.

3. The order of detention is challenged in this petition under Article 226 of the Constitution of India on various grounds. However, Ms. Patel, learned advocate appearing for the petitioner submitted that the authority has considered irrelevant factors while considering the question of detention. In order to substantiate her say, she has drawn attention of this Court to the fact that the detaining authority has considered possibility of resorting to section 57 ((C)) of the Bombay Police Act. Ms. Patel submitted that for taking action u/S. 57(C) of the Bombay Police Act, minimum three convictions within a period of three years are required. While in the instant case there is no conviction at all and only two offences are registered. Third offence is not even registered. Therefore, the decision of the detaining authority would be vitiated on account of consideration of irrelevant material. Ms. Patel therefore, urged that the petition may be allowed.

4. Mr. Bhatt, Ld. AGP has opposed this petition. He submitted that the petitioner detenu is involved in prohibition cases and his activities are detrimental to public order and public health. He, therefore, urged that the petition may be dismissed.

5. Having regard to the rival side contentions, my attention is drawn to the following decisions :

(i) Parshottam Navalram Khemani v. State of Gujarat & anr. reported in 1985 (2) G.L.R. 620,
(ii) Harivadan Mathurdas Modi v. District Magistrate, Bharuch & Ors. reported in 1989 (2) G.L.H. 505,
(iii) Mava Arjan Parmar v. Commissioner of Police reported in 1990(1) G.L.R. 481, and
(iv) Bhupatbhai @ Undardo v. Commissioner of Police, Vadodara (unreported decision of Gujarat High Court in Special Civil Application No. 1344/1989 dated 6/3/1990).

6. While considering less drastic remedies the authority has to consider the available remedies and in doing so it may consider the possibility of resorting to section 57(C) of the Bombay Police Act provided that remedy is available. Only the possibility of those remedies which are legally available can be validly considered by the detaining authority. Consideration of other factors or materials or possibilities by way of alternative remedy is not permissible, as it would reflect either non-application of mind or only a window-dressing for indicating such consideration to fulfill requirement of performance of formality.

7. In the instant case admittedly only two offences are registered out of which one is pending trial and other is pending investigation. For resorting to proceedings u/S. 57(C) of the Bombay Police Act, minimum three convictions are required. Therefore, unless there are three convictions as contemplated u/S. 57(C) of the Bombay Police Act, consideration of that remedy is not permissible as it would be an extraneous factor and would only reflect paper work.

8. The result is that the decision making process of the detaining authority while passing the order of detention would stand vitiated on account of consideration of irrelevant material. Therefore, the detention would be bad in the eyes of law and it cannot be permitted to stand. The petition, therefore, deserves to be allowed.

9. In the result, the petition is allowed. The impugned order of detention passed by the Commissioner of Police, Rajkot City, Rajkot being No. P.C.B./D.T.N./PASA/53/2000 dated 10/6/2000 is hereby quashed and set aside. The petitioner - Manharsinh

Manoj Narendrasinh Rayjada is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

PVR.